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D.B. CIVIL WRIT PETITION NO.2631/2007.
[ICAR & ANR. VS. SIRI RAM & ANR.]

Date of Order :09.08.2007

HON'BLE JUSTICE SHRI RAJESH BALIA
HON'BLE JUSTICESHRI MAHESH CHANDRA SHARMA

Mr.Ashok Chhangani for the petitioner.
Mr. Vijay Mehta for the respondent.

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This petition is directed against the order passed by the Central Administrative Tribunal, Jodhpur dated 15.09.2006 in Original Application No.123/2005 and Misc. Application No.58/2005 in the light of the Award passed by the Industrial Tribunal cum Labour Court Jodhpur dated 10.03.1997 challenged before this Court by way of filing S.B. Civil Writ Petition No.2333/98 which was dismissed by learned Single Judge on 09.11.2000 and Special Appeal against the said order was also dismissed on 19.01.2001.

The facts leading to the present case are that respondent Sri Ram was appointed by Director, Central Arid Zone Research Institute, Jodhpur on 02.01.1982 and he continued to work as a daily rated workman until 02.01.1985 when his services were terminated by an oral order.

The termination was challenged by raising an industrial dispute which culminated in Award dated 10.03.1997 by Labour Court, Jodhpur in Labour Dispute No.53/1994. The retrenchment of the workman was found to be illegal and he was directed to be reinstated forthwith with continuity of service along with 50% of back wages.

The said Award was ultimately became final as aforesaid and the respondent workman was reinstated.

While the petitioner was under termination order that the Union of Workers had raised a charter of demand raising many demands against the petitioner employer including the demand for conferment of semi-permanent status after completion of two years service and subsequent of permanent status pointed out that for long the workmen are kept casual when there exist permanent work. Such a practice of keeping workman on tenthes hook for indefinite period amounts to unfair labour practice. This dispute had also been referred to Industrial Tribunal and Labour Court, Jodhpur vide Notification dated 12.11.1986. The said dispute related to aforesaid charter of demand submitted by the Arid Zone Employees Union, Jodhpur, for considering the

reasonableness and validity of such demands only four demands had been referred for adjudication. These were demand No. 4, 7, 11 and 14. Only of the charter of demand referred for adjudication to the Industrial Tribunal-cum-Labour Court, Jodhpur, relevant for present purpose is only demand No.7, which was for conferring the status of workcharge workman w.e.f. the date of completion of his 240 days by counting actual working as such casual daily rated worker. Out of various demands, referred to it, only demands No.7 and 11 were accepted by the Tribunal and demands No. 4 and 14 were found to be not acceptable.

About the demand for conferring the status on the workman of the Central Arid Zone Institute, Jodhpur on completion of 240 days actual working, it was directed by the Tribunal that all the workmen who were employed in CAZRI between 1965 to 83, on completion of their two years service they should be made workcharged/regular workman. It was also directed that with effect from the date of making them regular, they should be fixed at the minimum of pay scale along with admissible dearness allowance. Thereafter, they may be absorbed by creating regular posts. Until their absorption, such workman on completion of two years service shall be paid at the

minimum of pay scale and dearness allowance. The employer was directed to make a scheme for absorption on the regular posts within six months from the date of the Award. The period of total service was also required to be counted for the purpose of retiral benefits. It was also envisaged that the person regularised under the Scheme shall be entitled to 15 days paid holidays inclusive of national holidays and festivals.

This Award had been made on 24.08.1989.

The Award dated 24.08.1989 for conferring the status of the work charge on completion of two years service of those workman who had completed two years service and those workman who were employed between 1965 to 1983 and had completed two years continuous service, seeking the date of their employment w.e.f. the date of regularization in terms of the scheme framed by the employer, they were entitled for fixation in the regular pay scale and other regular benefits.

The Award dated 24.08.1989 had been challenged by the present petitioner-employer before this Court by way of filing of S.B.Civil Writ Petition No.1420/1992 CAZRI Vs.

ASEU which was dismissed by the learned Single Judge on 09.10.1998. Thereafter a Review Petition No. 2807/1997 [defect] was also dismissed on 09.10.1998. Thereafter, D.B.Civil Special Appeal No. 3/03 [defect] was preferred by the CAZRI which too was dismissed on 17.04.2000 and Special Leave Petition against the same was also dismissed by the Apex Court. Thus, the Award dated 29.04.1989 become final for conferment of status of work charge and regularization, of all the daily rated workers who were employed in the CAZRI between 1965 to 1983, which include the respondent also. Albiet as on the date when the Award was made, he had been retrenched from the service and was not actually in service on that date,but he had ultimately been reinstated as a result of adjudication by the labour court with continuity of service. Since the respondent workman in the present case had been employed with the CAZRI w.e.f. 02.01.1982 and as he was a person employed within the stipulated period between 1965 to 1983 and had completed two years service in 1984, therefore, in terms of the Award dated 10.03.1997 he became entitled to conferment of the work charge status on completion of two years of service and was further entitled to be regularised in terms of the scheme framed in pursuance of the directions issued on 24.08.1989.

When the termination order of the respondent workman was set aside by the Industrial Tribunal cum Labour Court vide its order dated 10.03.1997 and he was reinstated with continuity of service, he must be deemed to be in employment continuously w.e.f. the date of first appointment i.e. 02.01.1982 and be treated in service when the Award was made.

After the respondent workman was reinstated he claimed to be governed by the Award dated 24.08.1989 in terms of his status and the emoluments to be paid to him and his regularization in the service. That relief was denied to the respondent workman by the present petitioner. Hence, the matter was taken before the Central Administrative Tribunal.

The Tribunal, has allowed the Original Application preferred by the respondent workman and directed that he is entitled for all the due benefits as per Award dated 24.08.1989, however, confining the actual monetary benefits to be admissible w.e.f. 19.04.2002 only that is to say within three years prior to the date of filing of the Original Application before the Tribunal for seeking relief in this regard.

Hence this petition.

The learned counsel for the petitioner has urged before us two fold contentions. Firstly, that in view of the Supreme Court decision in Secretary State of Karnataka & Ors. Vs. Umadevi & Ors. 2006 [4] SCC page 1 and Indian Council of Agricultural Research & Anr. Vs. Santosh AIR 2007 SC 267 no regularization could have been directed by the Tribunal and secondly, that since the respondent workman was not in the actual employment at the time when Award was made on 24.08.1989, therefore, the subsequent reinstatement cannot entitle him to any benefits arising out of the said Award.

Having considered the rival contentions in the fact and circumstances of the case this petition must fail.

The rights of the workman respondents are governed by his de jure status as on 24.08.1989 in the light of award dated 10.3.97 by which he had been reinstated with continuity of service by finding termination of his services to be invalid. Said adjudication coupled with adjudication by the Industrial Tribunal vide award dated 24.08.1989 regarding workmen's demands serving in the establishment

in question viz CAZRI, which will govern all the workmen of CAZRI. Such rights governed by an operative award/ which had attained finality are withered away by general principle laid by the Supreme Court in the matter of regularization in later decision.

It is not a case where the respondent workman is seeking adjudication for his case for regularization on the basis of long continuous service and the Tribunal or for that matter this Court is not required to consider whether petitioner is a casual worker since 1982 is now entitled to be regularized independent of any crystallize right under an Award which is binding on all parties under Section 18 of the Industrial Disputes Act, 1947 and was primarily meant to remove the anomalies arising due to unfair labour practice as defined under Schedule V of the Industrial Disputes Act, 1947 and was prevailing in CAZRI at the relevant time.

It is a case in which the workman claims that he falls within the purview of Award which governs all the employees who were in employment of CAZRI as a casual and daily rated workmen between 1965 to 1983 and whose regularization and absorption as well as for right to

emoluments was governed by the existing Award of Labour Court which had become final and became binding and operative in terms of Section 18 of the Industrial Disputes Act. The fact that specifically status of respondent workman was of a retrenched employee as on the date of the Award was made, cannot take away the affect of subsequent adjudication about the validity of his termination order which was found to be illegal and he was reinstated with continuity of service.

The effect of award is that petitioner has to be treated in continuation service since the date of his appointment in 1982 throughout the period until he is reinstated as a result of his retrenchment was held to be invalid. Legal effect of this is that the petitioner was de jure in service award dated 24.8.1989 had been made. Once this is accepted, and is to be accepted, this is to further dispute that respondent workmen fulfilled all the conditions of the award and the scheme framed by the present petitioner in giving effect to the award.

Independent of all controversies and litigation, the respondent workman has been in employment since 02.01.1982 and had completed two years continuous

service on 02.01.1984. Thereafter he has continued in service at least and until 01.01.1985 when his services were orally terminated by considering him to be a casual employee. But in terms of the Award dated 24.8.1989 the respondent workman gets the status of work charged employee on 02.01.1984 itself. Viewed in that light even his termination order thereafter could not have affected this postion. Be that as it may we have no doubt in our mind that once respondent workman was reinstated by finding his retrenchment to be invalid with continuity of service, the legal affect of Award was that his services never came to an end and he has to be treated as in continuous service. The period of service was never broken since his first appointment.

That being the position, the consequences become clear. He became entitled to be considered and given a status in terms of award and was also required to be absorbed on regular post w.e.f. the date any person appointed on or after 02.01.1982 was given that status, in terms of the Award dated 29.04.1989. That being an adjudicated matter by an Award of the Labour Court in terms of Section 18 [3] [d] binding the employer qua all workmen who were employed in establishment or part of

the establishment as the case may be to which the dispute relates on the date of dispute as well as all persons who subsequently become employed in that establishment or part thereof. By dint Award dated 10.03.1997, the respondent workman was a person employed in CAZRI, since 1982 the establishment to which dispute relates, and he was employed on the date of the dispute, therefore, the Award binds the establishment CAZRI, as well as the workman under Clause [d] of sub-section [3] of Section 18 of the Act. He became entitled to be admitted to benefit of Award dated 24.8.1989 in terms of Section 18 of sub-section [3] [d] of the Act of 1947.

It may not be out of place to mention that so far as the raising of industrial dispute and its adjudication is concerned, the grant of semi-permanent or permanent status and regular status to a casual, or temporary employee for long duration is part of statutory scheme framed by the Parliament.

Under Section 2[k] of the Industrial Disputes Act, 1947, Industrial Dispute has been defined to mean any dispute or difference between employees and employer or between employer and workman or between workman

and workman which is connected with employment or non-employment or terms of employment or with the conditions of labour of any person.

The Act of 1947 also defines unfair labour practices under Section 2(ra) to mean any of the practices specifies in the Schedule V attached to the Act. Amongst others, unfair labour practices enumerated in schedule V of the Act and is included Item No.10 that to employ workman as casual or daily rated or badli and to continue them as such with the intention of depriving them of the status of permanent or semi-permanent workmen to amounts unfair labour practice.

Amongst others, unfair labour practices enumerated in schedule V of the Act and is included workmen have a right to raise an industrial dispute about practicing such unfair labour practice and get its adjudication and relief through reference u/s 10 of the Act. This was exactly resorted to by the workmen of CAZRI by raising an Industrial Disputes through their trade Union by raising a grievance in that regard and the same grievance was found to be justified and relief was granted as per aforesaid award. Hence the grant of relief by the labour

court was not de hors the statutory provision. Such an adjudication is not in conflict with the decisions of Supreme Court noticed above. The Apex Court has not laid down the ratio that even if an adjudication of an industrial dispute the labour court or industrial Tribunal finds existence of a prevalent unfair labour practice as defined under item 10 of V schedule to the Act, it cannot grant appropriate relief through making an award.

Once a valid award in terms of statutory scheme has came into existence it must be giving its effect to.

Therefore under the mechanism of the Industrial Disputes Act there is inherent provision for raising dispute about unfair labour practice of employer keeping the workmen for long period without status, which may result in depriving of benefit of a permanent employment which he is entitled to and grant of appropriate benefit through industrial adjudication. This has actually happened in the present case. Charter of demand has been raised by the workers Union in respect of continuous, status of large number of workers as casual labour for long period and accepting it to be so the industrial adjudication was made

by directing the employer to remove the prevalent unfair labour practice in the manner noticed by us vide Award dated 28.4.1989 Therefore, even otherwise the Award of the Labour Court cannot be said to be de hors to the provisions of law.

Therefore, the contentions of the learned counsel for the petitioner cannot be sustained and the petition must fail.

Accordingly, the petition is dismissed. No orders as to costs.

(MAHESH CHANDRA SHARMA),J. **(RAJESH BALIA), J.**

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